75-1184

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. , Misc.

PEGGY J. CONNOR, HENRY J. KIRKSEY, ET AL.,

Petitioners,

v.

HONORABLE J. P. COLEMAN, United States Circuit Judge, HONORABLE DAN M. RUSSELL, JR., United States District Judge, HONORABLE HAROLD COX, United States District Judge, and the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,

Respondents.

Response of James P. Coleman, United States Circuit Judge, 5th Circuit, on behalf of himself, Chief District Judge Russell, and District Judge Cox (3 Judge Court) to the Motion of Petitioners for Leave to File a Petition for Writ of Mandamus

James P. Coleman
United States Circuit Judge
Ackerman, Mississippi 39735
601-285-6512

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States

In response to the motion for leave to file a petition for writ of mandamus in this case, the undersigned James P. Coleman, United States Circuit Judge, for and on behalf of himself and the other judges of the three judge District Court, respectfully begs leave to file the following response.

It is noted that the United States Department of Justice, a very active party participant in this case, has not joined in the motion for leave to file the petition for mandamus.

The members of the three judge District Court, who have labored with the perplexities and intricacies of this legislative reapportionment case for ten years, respectfully inform the Court that there is not now, and there has never been, any purpose to delay the final termination of this litigation, consistently with the requirements of the law and sound judicial practice.

As will be seen from the pleadings and exhibits filed by the petitioners, and as evidenced by the presence of the Department of Justice in this case, the paramount issue remaining for disposition is impermissible dilution or minimization of black voting strength. Please see the May 19, 1975 opinion of this Court, 396 Fed. Supp. 1308, and our opinion dated July 11, 1975, petitioners' appendix F, page 26a.

Our order of January 26, 1976, appendix A of the petition [the copy appearing at page 2a incorrectly dates at 1975], deferred this case solely in order that we may have the benefit of decisions anticipated from the Supreme Court in three cases therein cited, dealing with the subject of impermissible dilution or minimization of the black vote.

The legislature elected under the temporary reapportionment plan of 1975 is now in session, scheduled by law to adjourn April 1, 1976. It is not due to be reassembled, in absence of a special session, until January, 1977. Thus, no emergency exists requiring the Court to rush into a premature decision in this case which might turn out to be at variance with what the

Supreme Court is soon to tell us, which would require further hearings and revisions to comply therewith.

On the Subject of Delay

Present counsel for the petitioners, who came into the case about five years after its inception, charges the Court with inordinate and unreasonable delay in the disposition of this litigation.

While, ordinarily, judges would not deign to offer a defense to such charges, we feel that we are entitled to state the facts. Obviously, that is what the Supreme Court, or any other court, would desire in the premises.

The reapportionment order by this Court in 1966, based on the 1960 census, was not appealed. It thus became final, and the elections of 1967 were held thereunder.

The 1966 reapportionment was mooted by the population changes reflected in the 1970 census. Thus the

present litigation actually is based on the 1970 census and dates from 1971, not 1965.

The Mississippi Legislative elections of 1971 were conducted under our court ordered plan, adopted that year. The plaintiffs sought to have this election set aside, but the Supreme Court denied the request, Connor v. Williams, 404 U.S. 549 (1972).

It is true that this Court took no action during the immediately ensuing years because it was simply adhering to the repeated teachings of the Supreme Court that the primary responsibility in this field rests with the state legislatures.

The 1972-1976 legislature was thus given an opportunity to enact a reapportionment plan of its own construction. The record in this case shows that the legislature made an extensive, diligent effort to construct a lawful plan of its own. For the details of this effort, please see 396 Fed. Supp. 1314-1317. The legislature finally came to the conclusion that it could not improve upon the plan adopted by this Court in 1971. It re-enacted the plan in every particular except as to Hinds, Harrison and Jackson Counties,

which had been made the subject of a Supreme Court Opinion in 1971.

This Court, responding to attacks on the 1975 plan, held hearings and entered an extensive opinion and decree, which is reported at 396 Fed. Supp. 1308. This was reversed because the Court had adopted the legislative plan, not previously submitted to the Attorney General of the United States under the Voting Rights Act of 1965, 95 S.Ct. 2003. This reversal came on June 5, 1975. The deadline to qualify for the 1975 primaries was set by law for June 5. By July 11 we had formulated a temporary plan for the 1975 elections and extended the deadlines in the altered districts. The 1975 elections were held according to this plan, concerning which the petitioners sought no Supreme Court stay or other review. The legislature so elected is now sitting.

Incidentally, on April 10, 1975, 396 Fed. Supp. 1308, we dismissed finally all prior proceedings in this case as moot and directed the plaintiffs to file an amended complaint in order that we might "begin with a fresh record, shorn of the papers accumulated during the previous ten years". There was no appeal from this

order and the amended complaint was duly filed. Thus, in actual fact, we have had the present litigation for ten months, during which we have taken all the steps above recited.

By strenuous efforts, working long hours overtime, to the point of physical exhaustion, and by conferring with the parties to this litigation personally, the temporary plan was put into effect for the 1975 elections, making the changes as to Hinds, Harrison and Jackson, which the Supreme Court had mandated in 1971, plus other changes, such as in Madison, Rankin, Marshall and other counties in Mississippi, so as to avoid where possible any possibility of impermissible dilution or minimization of black voting strength.

There has been no purposeful or unjustified delay.

Conclusion

We respectfully suggest that in the absence of any abuse of judicial discretion or judicial power, and there has been none, this Court is entitled to control

its docket and the timing of its decisions.

We are attempting to follow here the practice, uniformly followed in the Fifth Circuit, of not rushing in to decide issues that we know to be pending before the Supreme Court, which most certainly will control the outcome of the pending case.

Prayer

We pray that the motion for leave to file the petition for mandamus be denied and that this Court be left, to the best of its ability, to resolve this litigation according to the teachings of the Supreme Court.

Respectfully submitted

Jas. P. Coleman
United States Circuit Judge

For himself and the other members of the Three Judge Court